IN THE HIGH COURT OF JUDIATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1506 OF 1991

Yeshwant Ramchandra Nikam
235, "B" Ward, Mangalwarpeth
Kolhapur .. Petitioner.
Vs.
1. Sakharam Vithoba Yadav ..
2. Vishnu Vithoba Yadav
(deceased) ..
3. Dhondi Yakub Hajari
All of Mouje Vadgaon,
Tal.Hatkanangale,
Dist.Kolhapur .. Respondents.

Mr.Anil L.Desai for the petitioner.
Mr.N.J.Patil for the respondents.

CORAM : D.B.BHOSALE, J.

DATED : 5TH OCTOBER, 2004

ORAL JUDGMENT:

1. By means of this writ petition under Article 227 of the Constitution, the petitioner has impugned the concurrent findings recorded by all the three authorities below by which the purchase price under section 32-G of the Bombay Tenancy and Agricultural Lands Act, 1948 (for short 'the Tenancy Act') has been determined. The ALT by order dated 31.7.1979 fixed the purchase price and directed to withdraw the lands in question from the petitioner-landlord (for short "the landlord") and

hand them over to the respondent-tenant (for short "the tenant") after following proper procedure. The purchase certificate under section 32-M of the Act was also directed to be issued after purchase price was fully paid by the tenant.

2. The facts leading to this petition, in brief, are as follows : Initially the proceedings under section 32-G were initiated in 1961. In those proceedings sale was declared ineffective by the Deputy Collector and ALT by order dated 31.12.1961. The landlord, therefore, initiated proceedings under section 32-P of the Tenancy Act in which the ALT by order dated 14.10.1963 directed the tenant to hand over possession of the land in question to the landlord. It appears that the landlord was in fact put in possession of the land in question. This order was challenged in Tenancy Appeal by the tenant before the Collector, Kolhapur, who by his order dated 31.1.1967 quashed and set aside the order under section 32-P and directed ALT to hold fresh enquiry under section 32-G of the Tenancy Act. The ALT on remand dropped the proceedings in view of the fact that land in question was governed by section 43A of the Tenancy Act in view of the fact that the land was leased

for the cultivation of sugarcane. That order of ALT dated 31.3.1970 was once again carried in appeal by the tenant before the Collector, who by his order dated 7.5.1976 quashed and set aside the order of the ALT and remanded the case for fresh hearing of the proceedings under section 32-G of the Tenancy Act holding that the land in question was not governed by the provisions of section 43A of the Tenancy Act. Admittedly, the landlord never challenged the orders dated 31.1.1967 and 7.5.1976 passed by the Collector, Kolhapur. After remand the enquiry under section 32-G was held and the purchase price came to be determined by ALT by his order dated 31.7.1979. The landlord carried that in appeal before the Leave Reserve Deputy Collector, Kolhapur, who by his order dated 15.5.1989 dismissed the appeal. The matter was thereafter carried in revision by the landlord before the Tribunal which dismissed the revision by order dated 21.9.1990. Hence the petitioner-landlord is before this court in the instant writ petition.

3. The land in question was admittedly "Sanadi Inam land" and it was regranted to the landlord on 14.2.1969 on payment of occupancy price by him.

That being so, initiation of the proceedings under sections 32-G in 1961 and 32-P in 1963 were not only pre-mature but were illegal and redundant.

3.1 Keeping that in view and considering that the land in question was Inam land and it was regranted on payment of occupancy price to the landlord the provisions of section 32-G(6) of the Tenancy Act would have application in this case. The provisions contained in section 32-G(6) shows that nothing contained in any of the Land Tenures Abolition Acts referred to in Schedule III of the Tenancy Act, can affect tenant's right of purchase under section 32. Section 32-G(6) provides that if any land which, by or under the provisions of any of the Land Tenures Abolition Acts referred to in Schedule III to this Act, is regranted to the holder thereof on condition that it was not transferable, such condition shall not be deemed to affect the right of any person holding such land on lease created before the regrant and such person shall, as a tenant, be deemed to have purchased the land under section 32-G, as if the condition that it was not transferable was not the condition of regrant. There is no dispute that the Land Tenure Abolition Act involved in the instant writ petition

is included in Schedule III of the Tenancy Act. Thus, even if the land, after abolition of Inam effected under the Abolition Act, was regranted to the landlord on condition that it was not transferable such a condition cannot affect the right of the respondent-tenant to purchase the land under section 32 and 32-G of the Tenancy Act. In other words, the statutory purchase of a land by a tenant under the provisions of Tenancy Act is accepted from the restrain of non-transferability. It is undisputed that the tenant was holding the land on a lease created before the occupany rights were regranted to the landlord on the abolition of the Inam. This view is reinforced by the dictum of the Apex Court in the case of **Pandurang Dnyanoba Lad Vs. Dada Rama Metha and Others AIR 1976 Supreme Court 1910**. Keeping this position in law in view, in my opinion, the proceeding initiated prior to 14.2.1969 were illegal and redundant. The tenant was in possession since prior to 1.4.1957 and the lease was subsisting on the date of regrant. And, therefore, on 14.2.1969, date on which the land in question stood regranted in favour of the landlord, the tenant became deemed purchaser and he was, entitled to get the purchase price determined under section 32-G of the Tenancy

Act.

3.2 In so far as the contention urged by the petitioner that since the land is governed by the provisions of section 43-A(1) of the Tenancy Act a tenant cannot become deemed purchaser even after the land was regranted to the landlord on 14.2.1969 is concerned, all the authorities have concurrently held that land was not governed by section 43-A of the Tenancy Act inasmuch as it has not been established that the land in question was leased for growing sugarcane. Under Article 227 of the Constitution, this court cannot function as the Court of appeal and is generally bound by the findings of fact recorded by the Tribunal below. The limits of the High Court's jurisdiction under Article 227 are too well established. This Court is not expected to disturb the concurrent findings recorded by the Tribunal below. However, for my satisfaction, I examined the material placed before me to find out whether the land was really governed by the provisions of section 43-A of the Tenancy Act as contended by the landlord. As a matter of fact the landlord has not produced any material on record to show that the land was being cultivated for sugarcane crop. In fact the record shows that

the tenant had accepted the lease of land for cultivation of ‘Jirayat Crops’. The relevant entries to that effect for the year 1956-57 to 1960-61 support the contention of the tenant. The landlord in his deposition dated 20.7.1990 has merely stated that he used the land in question for cultivation of sugarcane. The record shows that only in the year 1970 the land was used for cultivation of sugarcane. In view of this I find no reason to disturb the concurrent findings recorded by all the authorities below holding that the provisions of section 43-A of the Tenancy Act will not be applicable to the present case.

4. In the result the petition fails and is dismissed as such. Rule stands discharged. No costs.

(D.B.Bhosale, J.)

HIGH COURT AT BOMBAY
CIVIL APPELLATE SIDE

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Date of Decision: 5th October, 2004

For approval and signature:

The Hon'ble Mr. Justice : D. B. BHOSALE

1. Whether Reporters of Local papers may be allowed to see the judgement ?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any Order made thereunder?

5. Whether it is to be circulated to the Civil Judges?

6. Whether the case involves an important question of law and whether a copy of the judgment should be sent to Nagpur Office?